

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

PLANNED BUILDING SERVICES, INC. ¹

Employer

and

Case No. 2-RC-22762

**LOCAL 550 NATIONAL SECURITY OFFICERS
BENEVOLENT ASSOCIATION**

Petitioner

**DECISION AND
DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a Hearing Officer of Region 2 of the National Labor Relations Board. At issue in this hearing is whether Petitioner is a labor organization and if so, whether it is qualified, under Section 9(b)(3), to represent security guards.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, it is found that:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. The parties stipulated that the Employer is a New Jersey corporation, having an office and place of business located at 167 Fairfield Road, Fairfield, New

¹ The name of the Employer appears in conformity with a stipulation of the parties at the hearing.

Jersey. The Employer is engaged in the business of providing cleaning and maintenance services and security services at various commercial and residential buildings, including Park West Village, located at 784 Columbus Avenue, New York, New York, the only facility involved in this matter. Annually, the Employer, in the course and conduct of its business operations, performs services valued in excess of \$50,000 directly for enterprises located outside the State of New Jersey, and purchases and receives goods valued in excess of \$5,000 directly from suppliers located outside the State of New Jersey.

Based on the stipulation of the parties, and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties did not enter into a stipulation regarding the labor organization status of Petitioner. On the record, Employer's counsel indicated that there was an issue as to whether or not the Petitioner was a labor organization within the meaning of the Section 2(5) of the Act. Notwithstanding this, the Employer did not state on the record what position it took in this regard.

Ryann McCarthy, an official of the Union who did not identify any particular title that he holds in the Union, testified that Petitioner is a new organization, is engaging in its first organizational campaign, is not affiliated with any national or international union, or other organization, and intends to admit into membership only guards. McCarthy stated that he had organized the Employer's unit employees on behalf of Petitioner. He testified that he gave the employees blank union authorization cards, examples of which were shown to him at the hearing, although they were not marked for

identification or offered into evidence. These cards authorize Petitioner “to exclusively represent” the employees who might sign them “for the purpose of collective bargaining with any employer.” The cards also state that the Petitioner is designated to “negotiate and conclude all agreements respecting wages, hours and other terms and conditions of employment.”

McCarthy testified that there would be a committee of elected employee representatives to assist Petitioner in preparing contract demands to be made on the Employer, and shop stewards to be elected by employees, in the event the Petitioner were to secure a Certification of Representative for the unit employees.

Section 2(5) of the Act provides the following definition of labor organization:

Any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The statutory definition of a labor organization has long been interpreted broadly. See, *Electromation, Inc.*, 309 NLRB 990, 993-94 (1992), *enf’d*. 35 F.3d 1148 (7th Cir. 1994). To fall within the definition of a labor organization, the Board has held that employees must participate in the organization and it must exist for the purpose, in whole or in part, of dealing with employers. *Alto Plastic Mfg. Corp.*, 136 NLRB 850, 851-852 (1962). Under this definition, an incipient union that has not yet actually represented employees may, nevertheless, be accorded labor organization status, if it was *formed* for the purpose of representing employees. *Coinmach Laundry Corp.*, 337 NLRB No. 193 (2002); *The East Dayton Tool & Die Company*, 194 NLRB 266 (1971);

Butler Manufacturing Company, 167 NLRB 308 (1967). A finding of labor organization status does not require proof of the entity in question having ever “dealt with” an employer. *Coinmach Laundry*, *supra*; *Armco, Inc.*, 271 NLRB 350 (1984); *Steiner-Liff Textile Products Co.*, 259 NLRB 1064, 1065 (1982). Rather, it is the *intent* of the organization that is critical in ascertaining labor organization status, regardless of the progress of the organization’s development and what activities the organization has actually performed. *Edward A. Utlaut Memorial Hospital*, 249 NLRB 1153, 1160 (1980). Indeed, even if such an organization becomes inactive without ever having represented employees, it is still deemed to have been a statutory labor organization if its organizational attempts “[c]learly . . . envisaged participation by employees,” and if it existed “for the statutory purposes although they never came to fruition.” *Comet Rice Mills*, 195 NLRB 671, 674 (1972). Moreover, “structural formalities are not prerequisites to labor organization status.” *Yale New Haven Hospital*, 309 NLRB 363 (1992) (no constitution, by-laws, meetings, or filings with the Department of Labor); *Butler*, *supra*, at 308 (no constitution, bylaws, dues or initiation fees); *East Dayton*, *supra*, at 266 (no constitution or officers). Thus the absence of a constitution or bylaws is not relevant when analyzing whether an organization is a labor organization within the meaning of Section 2(5) of the Act. *Coinmach Laundry*, *supra* at 3.

The evidence presented at the hearing is sufficient to find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. Petitioner was formed to represent employees for the purpose of dealing with employers concerning wages, hours, and working conditions. The Act requires nothing more. I therefore find that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

I also find that Petitioner is qualified to represent guards within the meaning of Section 9(b)(3). There is no evidence to refute Petitioner's assertion that it is not affiliated with any national or international union, or other organization that admits non-guards into membership. Thus, based on the record, Petitioner is qualified to represent a unit of guards.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5. The parties stipulated and I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time security guards employed by the Employer at Park West Village, 784 Columbus Avenue, New York, New York.

Excluded: All other employees, including clerical employees, and professional employees and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time² and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and

² Pursuant to Section 101.21 of the Board's Statements of Procedure, absent a waiver, an election will normally be scheduled for a date or dates between the 25th and 30th day after the date of this Decision.

regulations.³ Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date of this Decision, including employees who did not work during the period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military service of the United States who are in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated eligibility period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.⁴ Those eligible shall vote on whether or not

³ Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer "at least 3 full working days prior to 12:01 a.m. of the day of the election." Section 103.20(1) of the Board's Rules. In addition, please be advised that the Board has held Section 103.20(c) of the Board's Rules. requires that the Employer notify the Regional Office at least five full working days prior to 12:01 a.m. of the day of the election, if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995).

⁴ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *North Macon Health Care Facility*, 315 NLRB 359 (1994); *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, three copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director, Region 2, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at the address below, on or before **December 3, 2003**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except

they desire to be represented for collective bargaining purposes by Local 550 National Security Officers Benevolent Association.⁵

Dated at New York, New York
November 26, 2003

(s) Elbert F. Tellem

Elbert F. Tellem
Acting Regional Director, Region 2
National Labor Relations Board
26 Federal Plaza, Room 3614
New York, New York 10278

Code: 177-3925-0000
177-3925-2000
177-3925-4000
177-3925-6000
177-3925-8000

in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

⁵ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. In order to be timely, this request must be received by the Board by no later than **December 10, 2003**.